

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re FIRSTENERGY CORP. SECURITIES	)	No. 2:20-cv-03785-ALM-KAJ
LITIGATION	)	
_____	)	<u>CLASS ACTION</u>
	)	
This Document Relates To:	)	Judge Algenon L. Marbley
	)	Magistrate Judge Kimberly A. Jolson
ALL ACTIONS.	)	
_____	)	

DISCOVERY CONFERENCE STATUS REPORT

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On July 6, 2023, the Court notified the parties that it would hold the presumptively scheduled July 20, 2023 discovery conference, “at which the parties should be prepared to discuss the appointment of a special master.” 7/6/23 Chamber’s email. The parties have met and conferred regarding the appointment of a special master. Certain parties have made proposals regarding the appointment of a special master. One such proposal is from Class Plaintiffs and the Direct Action Plaintiffs (together, the “Plaintiffs”).<sup>1</sup> The other proposal is from defendant FirstEnergy Corp. (“FirstEnergy”).

## **I. PLAINTIFFS’ PROPOSAL REGARDING APPOINTMENT OF SPECIAL MASTER**

If the Court determines that it would be appropriate to appoint a special master in this matter, Plaintiffs propose that: (1) the special master be appointed to decide all new discovery disputes that involve third parties (this Court would decide any pre-existing disputes involving third parties (*see, e.g.*, ECF 496)); (2) objections to decisions of the special master be made to Chief Judge Marbley directly; and (3) this Court continue to decide all discovery disputes between the parties.

## **II. FIRSTENERGY’S PROPOSAL REGARDING APPOINTMENT OF SPECIAL MASTER**

If the Court believes that a special master for discovery would be of assistance to the Court, FirstEnergy would agree to a special master’s appointment in light of the complexity and breadth of discovery in these actions and the associated burdens placed on the Court. Subject to the views of

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<sup>1</sup> Class Plaintiffs are Lead Plaintiff Los Angeles County Employees Retirement Association and named plaintiffs Amalgamated Bank, as Trustee for the LongView LargeCap 500 Index Fund, LongView Quantitative LargeCap Fund, LongView Broad Market 3000 Index Fund, LongView LargeCap 500 Index Fund VEBA, LV LargeCap 1000 Value Index Fund, LongView Quantitative MidCap Fund, LongView Quant LargeCap Equity VEBA Fund and LongView Core Plus Fixed Income Fund, City of Irving Supplemental Benefit Plan, and Wisconsin Laborers’ Pension Fund (collectively, the “Class Plaintiffs”). The Direct Action Plaintiffs are plaintiffs from the related actions captioned *MFS Series Trust I v. FirstEnergy Corp.*, No. 2:21-cv-05839 (S.D. Ohio) and *Brighthouse Funds Trust II – MFS Value Portfolio v. FirstEnergy Corp.*, No. 2:22-cv-00865 (S.D. Ohio).

the Court, FirstEnergy proposes that the scope of the special master's appointment should cover all discovery matters and not be limited to non-party discovery. In the interests of judicial efficiency and avoiding unnecessary complexity, FirstEnergy also would not exclude "pre-existing disputes" from the scope of a special master's appointment. FirstEnergy respectfully submits that (i) any objections to orders or recommendations of the special master should be made in accordance with Federal Rule of Civil Procedure 53 to be adjudicated by Magistrate Judge Jolson, or, at the discretion of the Court, by Chief Judge Marbley; and (ii) all decisions made under delegated authority should remain subject to review by the District Court pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72. FirstEnergy further submits that the compensation of a special master should be allocated 50% to the Plaintiffs and 50% to the Defendants.

### **III. PROCESS FOR SELECTING SPECIAL MASTER**

If the Court determines that it would be appropriate to appoint a special master in this matter, the parties agree on the following process for selecting the special master: the parties shall have seven calendar days to either (1) submit to the Court the name of a single proposed special master about whom all parties agree, or (2) submit to the Court the names of two proposed special masters, with Plaintiffs submitting one name and defendants submitting the other name, but the submission should not reveal which side is proposing which. To the extent there are any known unresolved objections on conflicts grounds, the existence of the objections should be disclosed without argument or additional information until further order of the Court.

Dated: July 19, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed electronically on July 19, 2023. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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